

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
MIDDLE DIVISION**

VIRGIL BROWNLEE, JR.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:06-cv-00797-RBP-PWG
	)	
RICHARD ALLEN, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM OF OPINION**

The magistrate judge filed a report and recommendation on May 31, 2007, recommending that the defendants' motion for summary judgment be granted and this cause be dismissed with prejudice. Plaintiff filed objections on June 14, 2007. (Doc. 19.)

In his objections, the plaintiff reiterates his disagreement with PHS's protocol which denies hepatitis C treatment to infected inmates who have normal ALT levels and/or a mental health condition. The plaintiff states that "ALT levels alone do not give a comprehensive picture of liver damage" and argues that he should be allowed to have a liver biopsy to determine the progression of the hepatitis C. (Doc. 19 at 2-3.) The plaintiff also reasons that his mental health condition should not prohibit him from receiving treatment for hepatitis C because he is only suffering from mental health impairments because he is not receiving hepatitis C treatment. (Doc. 19 at 4.) While the plaintiff clearly disagrees with PHS's protocol regarding medical treatment for inmates with hepatitis C, "a simple difference in medical opinion between the prison's medical staff and the inmate as to the latter's diagnosis or course of treatment [does not] support a claim of cruel and unusual punishment." *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991). As such, the

plaintiff has not shown that PHS's actions rose to the level of deliberate indifference.

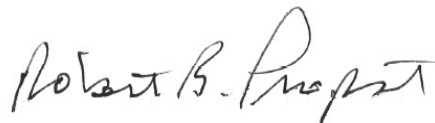
Furthermore, the plaintiff again alleges that Commissioner Richard Allen should be held liable for PHS's failure to treat his condition based on supervisory liability. (Doc. 19 at 7.) Plaintiff states in his objections, "Richard Allen has people under him who make[] rules for the Warden[s] of prisons and that means he has full power to say what will be or will not be which makes him a supervisory of the prison system." (Doc. 19 at 7.) As discussed above, the plaintiff has not shown that PHS was deliberately indifferent to his serious medical needs by denying him treatment for hepatitis C. Because there is no underlying constitutional violation based on PHS's protocol, supervisory liability cannot be imputed to Defendant Allen. *See generally, Thomas v. City of Clanton*, 285 F. Supp. 2d 1275, 1280 (M.D. Ala. 2003).

The plaintiff also repeats his claim that PHS does not have a well established grievance procedure and asserts that no grievance appeal forms were available to him in segregation. (Doc. 19 at 4-5.) The plaintiff acknowledges that the initial grievance form states that an inmate may request a grievance appeal form from the Health Services Administrator, but the plaintiff does not assert he ever asked the Administrator for an appeal form. (Doc. 19 at 6.) Instead, the plaintiff argues that if appeal forms are actually available in segregation as PHS states, he should not have to ask Nurse Mary Smith, Health Services Administrator, for one. (Doc. 19 at 6.) Plaintiff's argument is without merit and does not excuse his failure to appeal his grievance regarding his denial of medical treatment.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections filed by the plaintiff, the Court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and his recommendation is ACCEPTED. The Court **EXPRESSLY FINDS** that there are no genuine issues of material fact and

that the defendants are entitled to judgment as a matter of law. Accordingly, defendants' motion for summary judgment is due to be **GRANTED** and this action is due to be **DISMISSED WITH PREJUDICE**. A Final Judgment will be entered.

**DONE** this the 2<sup>nd</sup> day of July, 2007.

A handwritten signature in black ink, reading "Robert B. Propst". The signature is written in a cursive, flowing style with a large initial 'R' and 'P'.

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**ROBERT B. PROPST**  
**SENIOR UNITED STATES DISTRICT JUDGE**